

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

21-CA-224219

Date Filed

07-23-2018**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kaiser Foundation Hospitals; Southern California Permanente Medical Group	b. Tel. No. c. Cell No. f. Fax No. g. e-Mail james.czaja@kp.org h. Number of workers employed 400
d. Address (Street, city, state, and ZIP code) Attachment A	e. Employer Representative James Czaja, Human Resource Consultant, Downey Service Area Imperial Satellite Office, 12200 Bellflower Blvd., Downey, CA 90242
i. Type of Establishment (factory, mine, wholesaler, etc.) Medical	j. Identify principal product or service Healthcare
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the past six (6) months, the above-named Employer has failed to bargain in good faith with the collective bargaining representative of the Psych-Social Chapter. Specifically, the Employer has failed to provide and/or delayed in providing information requested necessary for the processing of the termination grievance of Tarina Marie.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) National Union of Healthcare Workers	
4a. Address (Street and number, city, state, and ZIP code) 5801 Christie Ave. Suite 525 Emeryville, CA 94608	4b. Tel. No. 510-834-2009 4c. Cell No. 425-275-8061 4d. Fax No. 510-834-2019 4e. e-Mail bsnyder@nuhw.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Florice Hoffman</u> (signature of representative or person making charge)	Florice Hoffman, Attorney (Print/type name and title or office, if any)
8502 E. Chapman Ave. Suite 353, Orange, CA 92869 Address	July 22, 2018 (date)
Tel. No. 714-282-1179 Office, if any, Cell No. 626-524-5965 Fax No. 714-282-7918 e-Mail fhoffman@socal.rr.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, and SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT A

Cheryl Kopitzke, Senior Legal Counsel
Kaiser Permanente
Legal Department
393 East Walnut Street
Pasadena, CA 91888

Ronald Goldman, Senior Counsel
Kaiser Foundation Health Plan Inc.
Legal Department
One Kaiser Plaza, 2IL
Oakland, CA 94612

Kaiser Foundation Health Plan Inc.
One Kaiser Plaza
Oakland, CA 94612

Kaiser Foundation Hospitals
393 East Walnut Street, Second Floor
Pasadena, CA 91188

Southern California Permanente Medical Group
393 East Walnut Street, Second Floor
Pasadena, CA 91188



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5200
Fax: (213)894-2778



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July 24, 2018

KAISER FOUNDATION HEALTH PLAN INC.
ONE KAISER PLAZA
OAKLAND, CA 94612

KAISER FOUNDATIONS HOSPITALS
393 EAST WALNUT STREET, SECOND FLOOR
PASADENA, CA 91188-0001

SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP
393 EAST WALNUT STREET, SECOND FLOOR
PASADENA, CA 91188

Re: KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP
Case 21-CA-224219

Dear Sir or Madam:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Board Agent MOLLY KAGEL whose telephone number is (213)634-6511. If this Board agent is not available, you may contact Deputy Regional Attorney NEIL WARHEIT whose telephone number is (213)634-6525.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate

fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP
Case 21-CA-224219

- 3 -

July 24, 2018

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



/s/WILLIAM B. COWEN
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cc: CHERYL KOPITZKE, SENIOR LEGAL COUNSEL
KAISER PERMANENTE
LEGAL DEPARTMENT
393 EAST WALNUT STREET, SECOND FLOOR
PASADENA, CA 91188

RONALD E. GOLDMAN, SENIOR COUNSEL
KAISER FOUNDATION HEALTH PLAN INC.
LEGAL DEPARTMENT
ONE KAISER PLAZA, 2IL
OAKLAND, CA 94612

WBC/hta



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

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Telephone: (213)894-5200
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July 24, 2018

BEN SNYDER, BUSINESS REPRESENTATIVE
NATIONAL UNION OF HEALTHCARE WORKERS
5801 CHRISTIE AVENUE, SUITE 525
EMERYVILLE, CA 94608

Re: KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP
Case 21-CA-224219

Dear Mr. Snyder:

The charge that you filed in this case on July 23, 2018, has been docketed as case number 21-CA-224219. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Board Agent MOLLY KAGEL whose telephone number is (213)634-6511. If this Board agent is not available, you may contact Deputy Regional Attorney NEIL WARHEIT whose telephone number is (213)634-6525.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text

July 24, 2018

messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



/s/ WILLIAM B. COWEN
Regional Director

Enclosures

cc: FLORICE HOFFMAN, ATTORNEY AT LAW
LAW OFFICE OF FLORICE HOFFMAN
8502 EAST CHAPMAN AVENUE, SUITE 353
ORANGE, CA 92869

WBC/hta

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP

and

Case 21-CA-224219

NATIONAL UNION OF HEALTHCARE WORKERS

COMPLAINT
AND
NOTICE OF HEARING

National Union of Healthcare Workers, herein called the Union, has charged that Southern California Permanente Medical Group, herein called Respondent Permanente, and Kaiser Foundation Hospitals, herein called Respondent Foundation, and collectively called Respondents, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on July 23, 2018, and copies were separately served on Respondents by regular mail on July 24, 2018.
2. (a) At all material times, Southern California Permanente Medical Group has been a California professional partnership engaged in the provision of medical services to health plan members, and the operation of health care clinics; and Kaiser Foundation Hospitals has been a

California nonprofit public benefit corporation engaged in the operation of various health care facilities in California, Oregon, and Hawaii. Together, with Kaiser Foundation Health Plan, Inc., a nonprofit health maintenance organization, they provide health care services to Health Plan members and others at various locations and facilities in Southern California, including a facility named Orchard Medical Offices, located at 9449 Imperial Highway, Downey, California.

(b) During the 12-month period ending October 30, 2018, a representative period, Respondent Permanente, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$250,000 and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the state of California.

(c) During the 12-month period ending October 30, 2018, a representative period, Respondent Foundation, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$250,000 and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the state of California.

3. (a) At all material times, Respondent Permanente has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

(b) At all material times, Respondent Foundation has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, James Czaja has held the position of Human Resources Consultant for Kaiser Foundation Health Plan, Inc., and has been an agent of Respondents within the meaning of Section 2(13) of the Act.

6. (a) As found the certification of representative in Case 21-RC-21118, the following employees of Respondents, herein called the Psych-Social Chapter Unit, which unit is referenced in Article I of the current collective-bargaining agreement between the Union and Respondents, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All employees including per diems covered by collective bargaining agreement including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist-San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II, psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. –San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Medical Group and Kaiser Foundation Hospitals within the Southern California Region.

Excluded: All office clerical employees, guards, and supervisors as defined in the Act

(b) Since at least February 3, 2010, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Psych-Social Chapter Unit and since that time the Union has been recognized as the representative by Respondents. This recognition has been embodied in a collective-bargaining agreement, which is effective by its terms for the period December 17, 2015, to September 30, 2018, and continues from year to year thereafter unless amended, modified, changed or terminated.

(c) At all material times since at least February 3, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Psych-Social Chapter Unit.

7. (a) About April 17, 2018, the Union, in writing, requested that Respondents furnish the Union with the following information:

(i) All corrective action cases involving NUHW members who have worked on an expired license.

(ii) All corrective action cases involving UNAC [United Nurses Association of California] or other nursing union members who have worked on an expired license.

(iii) Any corrective actions directly related to Tarina's case regarding management discipline.

(b) The information requested by the Union, as described above in paragraph 7(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Psych-Social Chapter Unit.

(c) Since about April 17, 2018, Respondents, by James Czaja, in writing, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 7(a).

8. (a) About June 21, 2018, the Union, in writing, requested that Respondents furnish the Union with the following information:

(i) All corrective action cases involving NUHW members who have worked on an expired license.

(ii) All corrective action cases involving UNAC [United Nurses Association of California] or other nursing union members who have worked on an expired license.

(iii) Any corrective/disciplinary action documentation for any managers related to this case.

(b) The information requested by the Union, as described above in paragraph 8(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Psych-Social Chapter Unit.

(c) Since about June 21, 2018, Respondents, by James Czaja, in writing, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 8(a).

9. (a) About April 17, 2018, and again on about June 21, 2018, the Union, in writing, requested that Respondents furnish the Union with the following information:

(i) All corrective action notes relating to Tarina Marie.

(b) The information requested by the Union, as described above in paragraph 9(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Psych-Social Chapter Unit.

(c) From about April 17, 2018, to about October 17, 2018, Respondents unreasonably delayed in furnishing the Union with the information requested by it as described above in paragraph 9(a).

10. By the conduct described above in paragraphs 7(c), 8(c), and 9(c), Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees in violation of Section 8(a)(1) and (5) of the Act.

11. The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondents are notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, they each must file an answer to the complaint. The answer must be received by this office **December 14, 2018, or postmarked on or before December 13, 2018.** Unless filed electronically in a pdf format, Respondents should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile

transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at 1:00 p.m., on **February 11, 2019**, a hearing will be conducted in Hearing Room 2 at the National Labor Relations Board, Region 21, US Court House, Spring Street, 312 N. Spring Street, Suite 10150, Los Angeles, California 90012, before an Administrative Law Judge of the Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Los Angeles, California, this 30th day of November, 2018.



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
312 N. Spring Street, Suite 10150
Los Angeles, California 90012

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP

and

Case 21-CA-224219

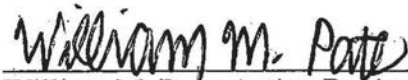
NATIONAL UNION OF HEALTHCARE WORKERS

ORDER EXTENDING TIME FOR
FILING ANSWER TO COMPLAINT

At the request of counsel for Respondent, and for proper cause shown,

IT IS HEREBY ORDERED that the time for filing an answer to the complaint in the above-captioned case be, and it hereby is, extended to January 11, 2019. No further extensions of time will be granted.

DATED at Los Angeles, California, this 7th day of January, 2019.



William M. Pate, Acting Regional Director
National Labor Relations Board,
Region 21
312 N. Spring Street, 10th Floor
Los Angeles, CA 90012

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP

and

Case 21-CA-224219

NATIONAL UNION OF HEALTHCARE WORKERS

AFFIDAVIT OF SERVICE OF: Order Extending Time For Filing Answer To Complaint

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 7, 2019**, I served the above-entitled document(s) by **regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Diamond Hicks, Counsel
Kaiser Permanente
Legal Department
393 East Walnut Street, Second Floor
Pasadena, CA 91188

National Union of Healthcare Workers
5801 Christie Avenue, Suite 525
Emeryville, CA 94608

Kaiser Foundations Hospitals; Southern
California Permanente Medical Group
393 East Walnut Street, Second Floor
Pasadena, CA 91188-0001

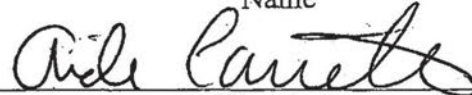
Florice Hoffman, Attorney at Law
Law Office of Florice Hoffman
8502 East Chapman Avenue, Suite 353
Orange, CA 92869

January 7, 2019

Date

Aide Carretero, Designated Agent of NLRB

Name



Signature

(626) 405-5686
Diamond.m.hicks@kp.org

Via E-Filing and E-mail

January 11, 2019

Molly Kagel
Irma Hernandez
Field Attorneys
National Labor Relations Board, Region 21
312 N. Spring Street., Fl. 10
Los Angeles, CA 90012
(213) 634-6511

Re: In the Matter of Kaiser Foundation Hospitals; Southern California Permanente Medical Group Case 21-CA-224219

Dear Ms. Kagel and Ms. Hernandez,

This letter provides the Respondent Employer's Answer to the Complaint that issued in the above-referenced matter.

As provided in Section 2 of the Complaint, the National Union of Healthcare Workers ("Union") alleges that:

Within the past six (6) months, the above-named Employer has failed to bargain in good faith with the collective bargaining representative of the Psych-Social Chapter. Specifically, the Employer has failed to provide and/or delayed in providing information requested necessary for the processing of the termination grievance of Tarina Marie."

The Employer denies that it has failed to bargain in good faith with the collective bargaining representative of the Psych-Social Chapter.

The Employer denies that it has failed to provide any information requested that is necessary for the processing of the termination grievance of Tarina Marie ("Marie"). The Employer further asserts that any delay in providing the information requested was reasonable and a result of either: (a) the Employer's attempt to clarify an ambiguous request or determine the relevance of the information requested by engaging in further discussion with the collective bargaining representative; or (b) the time necessary for the Employer to conduct a diligent search of documents in its possession, custody or control to determine whether responsive information existed.

At issue are three categories of information which the Employer contends either does not exist or are presumptively irrelevant and unnecessary to the determination of Marie's grievance. The Employer has notified the Union of its position regarding these matters, and the Union has either failed to accept the Employer's good faith representation that no documents exist, or has failed to affirmatively demonstrate the relevance of the requested information. Each of the categories of information are addressed below.

Category one: All corrective action cases involving NUHW members who have worked on an expired license.

The Employer objects to this request on the grounds that it is overbroad because it has not limits in geographic or temporal scope. The Employer further objects to this request on the grounds that it is unduly burdensome as it would require the Employer to conduct a manual search of every NUHW member's personnel and department file to determine whether corrective actions were relevant documents exist as the Employer does not maintain an electronic database that tracks this information. Notwithstanding this objection, the Employer has searched the records of NUHW members that worked in the same service area as Marie and determined that no responsive documents exists. The Employer has also through anecdotal evidence including the declaration of the most senior labor relations representative determined that it is more likely than not that there are no responsive documents in its possession custody or control for NUHW members in Southern California. Finally, the Employer is also undergoing a search for the records of all NUHW members within Southern California.

Category two: All corrective action cases involving UNAC [United Nurses Association of California] or other nursing union members who have worked on an expired license.

The Employer objects to this request on the grounds that it seeks information that is presumptively irrelevant to Marie's grievance or its arbitration and is disproportionate to the needs of this case. Where, as here, information not ordinarily pertinent to collective bargaining, such as information concerning non-unit employees, is requested by a union, relevance is not assumed. See *Press Democrat Publishing Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir.1980) (citations omitted). Instead the union must affirmatively demonstrate relevance to bargain-able issues. *Id.* Indeed, the Court has found insufficient a mere showing of "abstract, potential relevance." See *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 868-69 (9th Cir.1977). The Employer has engaged the Union to determine the relevance of this request and the Union has not provide evidence that demonstrates that the requested information is relevant to Marie's grievance or its arbitration.

Category three: Any corrective/disciplinary action documentation for any managers related to this case.

The Employer objects to this request on the grounds that it seeks information that is presumptively irrelevant to Marie's grievance or its arbitration and is disproportionate to the needs of this case. Where, as here, information not ordinarily pertinent to collective bargaining, such as information concerning non-unit employees, is requested by a union, relevance is not assumed. See *Press Democrat Publishing Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir.1980) (citations omitted). Instead the union must affirmatively demonstrate relevance to bargain-able issues. *Id.* Indeed, the Court has found insufficient a mere showing of "abstract, potential relevance." See *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 868-69 (9th Cir.1977). Therefore, the Union must show that information related to managerial discipline is precisely related to the grievance at issue. No such evidence or proffer has been provided by the Union. At no time during the grievance process has the Employer referenced or relied upon either

policies applicable to or discipline of non-bargaining unit managerial employees as a basis or justification for the termination of Marie's employment. Instead, the determination was based upon whether Marie worked on an expired license. Notably, the policy sections referenced to justify Marie's employment is not even applicable to managerial employees which further supports the Employer's good faith belief that the information is not relevant or necessary to the Union's administration of Marie's grievance or its arbitration.

The Employer further objects to this request on the grounds that it seeks information that is confidential and protected from disclosure by the California Constitution and the right of privacy.

Best regards,

Kaiser Foundation Hospitals



Diamond M. Hicks, Counsel III

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP**

and

Case 21-CA-224219

**NATIONAL UNION OF HEALTHCARE
WORKERS**

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from February 11, 2019 at 1:00 pm to 1:00 pm on **April 1, 2019** at, 312 N Spring Street, 10th Floor, Los Angeles, CA 90012. The hearing will continue on consecutive days until concluded.

Dated: January 16, 2019

William M. Pate

William M. Pate, Acting Regional Director
National Labor Relations Board, Region 21
US Court House
312 N Spring Street, 10th Floor
Los Angeles, CA 90012

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP**

and

Case 21-CA-224219

**NATIONAL UNION OF HEALTHCARE
WORKERS**

AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 16, 2019**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

National Union of Healthcare Workers
5801 Christie Avenue, Suite 525
Emeryville, CA 94608

Diamond Hicks, Counsel
Kaiser Permanente
Legal Department
393 East Walnut Street, Second Floor
Pasadena, CA 91188

Florice Hoffman, Attorney at Law
Law Office of Florice Hoffman
8502 East Chapman Avenue, Suite 353
Orange, CA 92869

Kaiser Foundations Hospitals;
Southern California Permanente Medical Group
393 East Walnut Street, Second Floor
Pasadena, CA 91188

January 16, 2019

Date

Aide Carretero, Designated Agent of NLRB

Name

/s/ Aide Carretero

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

KAISER FOUNDATION HOSPITALS; SOUTHERN
CALIFORNIA PERMANENTE MEDICAL GROUP

Case: 21-CA-224219

and

NATIONAL UNION OF HEALTHCARE WORKERS

RESPONDENT’S AMENDED ANSWER AND RESPONSE TO COMPLAINT

Respondent Kaiser Foundation Hospitals (“Respondent”), pursuant to Section 10(b) of the National Labor Relations Act (“Act”), 29 U.S.C. § 160(b), and Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board (“Board”), Series 8, as amended, hereby answer and otherwise respond to the above-captioned Complaint as follows:

1. Respondent admits receiving a copy of the charge in Case 21-CA-224219, but denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Complaint.

2. (a) Respondent admits and alleges that Kaiser Foundation Hospitals is a professional medical corporation organized under the laws of the State of California that provides medical services for Kaiser Permanente members in Southern California including a facility named Orchard Medical Offices, located at 9449 Imperial Highway, Downey, California. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 2(a) of the Complaint.

(b) Respondent admits the allegations contained in Paragraph 2(b) of the Complaint.

(c) Respondent admits the allegations contained in Paragraph 2(c) of the Complaint.

3. (a) Respondent admits the allegations contained in Paragraph 3(a) of the Complaint.

(b) Respondent admits the allegations contained in Paragraph 3(b) of the Complaint.

4. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

5. Respondent admits and alleges that, since at least June 2018, James Czaja was employed by Kaiser Foundation Health Plan, Inc. (“Health Plan”) but provided labor relations services to Respondent by virtue of an agreement between Respondent and Health Plan for the provision of such services. Respondent further admits and alleges that James Czaja acted as an agent of Respondent within the meaning of Section 2(13) of the Act. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 5 of the Complaint.

6. (a) Respondent admits and alleges that the list of employees identified Paragraph 6(a) under the indented caption “included” (the “Unit”) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 6(a) of the Complaint.

(b) Respondent admits and alleges that, since at least December 5, 2018, Respondent has recognized the National Union of Healthcare Workers (“NUHW” or the “Union”) as the exclusive bargaining representative of the Unit defined in Paragraph 6(a) of this Answer. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 6(b) of the Complaint.

(c) Respondent admits and alleges that, since at least December 5, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining

representative of the Unit defined in Paragraph 6(a) of this Answer. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 6(c) of the Complaint.

7. (a) Respondent admits and alleges that, the initial collective bargaining agreement between Respondent and the Union expired on September 30, 2018. Respondent further admits and alleges that Respondent and the Union met for several months prior to the expiration of the collective bargaining agreement, both in “pre-bargaining” sessions and traditional bargaining sessions, and that negotiations continue to date. Respondent further admits and alleges that, on or about April 17, 2018, Respondent received a written request for information from the Union (the “Request”). Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 7(a) of the Complaint.

(i) Respondent admits the allegations contained in Paragraph 7(a)(i) of the Complaint.

(ii) Respondent admits the allegations contained in Paragraph 7(a)(ii) of the Complaint.

(iii) Respondent admits the allegations contained in Paragraph 7(a)(iii) of the Complaint.

(b) Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7(b) of the Complaint.

(c) Respondent admits and alleges that, on or about May 8, 2018, Respondent provided the Union with a written response to the Request (the “May 8 Response”). Respondent further admits and alleges that, in the May 8 Response: Respondent furnished the Union with responsive documents or provided substantive answers to the presumptively relevant requests (items reflected in Paragraph 7(a)(i) of this Answer); raised a timely objection to the relevance of the information related to corrective action cases involving United Nurses Association of California or other nursing members who have worked on an expired license (items reflected in

Paragraph 7(a)(ii) of this Answer); and raised a timely objection to the relevance of information related to corrective actions regarding management discipline (items reflected in Paragraph 7(a)(iii) of this Answer). Respondent further admits and alleges that it furnished the Union responses clarifying its substantive answers and timely objections on May 18, June 21, July 18 and July 26, 2018. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 7(c) of the Complaint.

8. (a) Respondent admits and alleges that, on or about June 21, 2018, Respondent received a written request for information from the Union. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 8(a) of the Complaint.

(i) Respondent admits the allegations contained in Paragraph 8(a)(i) of the Complaint.

(ii) Respondent admits the allegations contained in Paragraph 8(a)(ii) of the Complaint.

(iii) Respondent admits the allegations contained in Paragraph 8(a)(iii) of the Complaint.

(b) Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8(b) of the Complaint.

(c) Respondent admits and alleges that, on or about June 21, July 18 and July 26, 2018, Respondent provided the Union with written responses to the June 21 Request. Respondent further admits and alleges that, Respondent furnished the Union with responsive documents or provided substantive answers to the presumptively relevant requests (items reflected in Paragraph 8(a)(i) of this Answer); raised a timely objection to the relevance of the information related to corrective action cases involving United Nurses Association of California or other nursing members who have worked on an expired license (items reflected in Paragraph 8(a)(ii) of this Answer); and raised a timely objection to the relevance of information related to

corrective actions regarding management discipline (items reflected in Paragraph 8(a)(iii) of this Answer). Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 8(c) of the Complaint.

9. (a) Respondent admits and alleges that, on or about April 17 and June 21, 2018, Respondent received a written request for information from the Union. Except as expressly admitted or alleged herein, Respondent denies the allegations contained in Paragraph 9(a) of the Complaint.

(i) Respondent admits the allegations contained in Paragraph 9(a)(i) of the Complaint.

(b) Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9(b) of the Complaint.

(c) Respondent denies the allegations contained in Paragraph 9(c) of the Complaint.

10. Respondent denies the allegations contained in Paragraph 10 of the Complaint.

11. Respondent denies the allegations contained in Paragraph 11 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim under the Act.

SECOND AFFIRMATIVE DEFENSE

The claims are barred to the extent that they were not filed within the applicable statute of limitations or administrative filing period as set forth in Section 10(b) of the Act, 29 U.S.C. §160(b).

THIRD AFFIRMATIVE DEFENSE

Respondent provided factually accurate and complete responses to the Union's requests for information.

FOURTH AFFIRMATIVE DEFENSE

Respondent provided the Union with responses in a timely manner and communicated with the Union regarding delays in collecting certain information that was reasonable in light of the depth and breadth of the Union's requests.

FIFTH AFFIRMATIVE DEFENSE

Respondent is not required to produce documents or information that does not already exist, nor is Respondent required to produce data or information in a format other than how it is maintained by Respondent in the regular course of business.

SIXTH AFFIRMATIVE DEFENSE

Respondent is not required to produce documents or information that is not relevant to the Union's performance as the collective-bargaining representative of Respondent's employees.

SEVENTH AFFIRMATIVE DEFENSE

Respondent is not obligated to provide information pertaining to discipline of members of UNAC, other non-bargaining unit employees or managerial discipline because the Union failed to meet their burden under *Disneyland Park*, 350 NLRB 1256 (2007), of demonstrating a reasonable belief, supported by objective evidence, that the information requested was relevant to the Union's performance as the collective-bargaining representative of Respondent's employees.

WHEREFORE, Respondent respectfully request that the Complaint be dismissed in its entirety.

DATED: January 31, 2019

Respectfully submitted,

By: /s/Diamond M. Hicks
DIAMOND M. HICKS
Diamond.m.hicks@kp.org
Telephone: (626) 405-5686

Attorneys for Respondent
Kaiser Foundation Hospitals

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

IN THE MATTER OF:)	
KAISER FOUNDATION HOSPITALS;)	
SOUTHERN CALIFORNIA PERMANENTE)	
MEDICAL GROUP,)	
)	Case No. 21-CA-224219
)	
and)	
)	
)	
NATIONAL UNION OF HEALTHCARE)	
WORKERS.)	
)	
)	
<hr style="border: 0.5px solid black;"/>)	

**RESPONDENT KAISER FOUNDATION HOSPITALS AND SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP’S POST-HEARING BRIEF**

Diamond M. Hicks
Kaiser Foundation Health Plan, Inc.
393 East Walnut Street, 2nd Floor
Pasadena, CA 91188
Telephone: (626) 405-5686
Diamond.m.hicks@kp.org

Counsel for Respondents Kaiser
Foundation Hospitals and Southern
California Permanente Medical Group

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I. Summary of the Argument

Counsel for General Counsel on behalf of Region 21 and the National Union of Healthcare Workers (“NUHW” or the “Union”) alleges that the Employer violated Sections 8(a)(1) and (5) of the National Labor Relations Act (“NLRA”) by refusing to provide information related 4 categories of information: (Request #1) all corrective action cases related to NUHW members who have worked on an expired license; (Request #2) all corrective action cases involving other nursing union members who have worked on an expired license, including corrective action cases involving members of United Nurses Associations of California, who it does not represent; (Request #3) any corrective actions directly related to the grievant’s case regarding management discipline; and, (Request #4) all corrective action notes relating to the grievant. The facts and settled case law do not support this conclusion.

Instead, the undisputed facts establish that the Employer engaged in good-faith bargaining when it provided timely responses including good faith objections to each of the information requests and continued to meet and confer with the Union in attempts to clarify its responses to the point of impasse.

The Union’s claims regarding Request #1 lack merit because its own witnesses admit that they understood from the Employer’s response that it did not have any documents responsive to Request #1.

The Union’s claims regarding Requests #2 and #3 lack merit because the information requested is presumptively irrelevant; and, at the time the requests were made, the Union failed to provide any objective evidence whatsoever in support of its claim that this information was germane to the underlying grievance. Notably the information presented at the time of the hearing does not establish the relevance of Request # 3 as the policy as issue does not apply equally to Union members and management. But even if it were relevant, the Union still ignored the timely objections raised by the employer, stating that it made no attempt to address them because it felt it was entitled to the information. Regardless of the Union’s failure to acknowledge as much, the Employer’s burden of compliance with Request # 2 and its confidentiality concerns with Request # 3 each constitute a reasonable basis for the Employer to deny these requests and arguably constitute admitted failures by the Union to bargain in good faith.

The Union’s claims regarding Request # 4 lack merit because the Employer has produced the requested information; and, the delay under these circumstances was reasonable as the undisputed facts establish that the request for “corrective action notes” was vague and ambiguous as evidenced by the following: the Union’s own witness admits that the term “corrective action notes” is not a term of art generally understood in the workplace; the Employer immediately provided the Corrective Action Level 5 document which the Union did not understand to be Employer notes; and the Employer did not understand a request for corrective action notes to seek the consultant’s notes.

The undisputed facts show that the Employer provided timely responses in response to the Union's RFI. And to the extent that it withheld information, doing so was justified by its good faith belief that the information requested was not relevant, too burdensome to produce, or protected from disclosure by confidentiality requirements that could not be overcome under the circumstances. As such, the Board should find that the Employer complied with Sections 8(a)(1) and (5) of the NLRA and dismiss this Complaint.

II. Summary of Relevant Facts

Tarina Marie ("Grievant") worked as a psychiatric nurse for Employer and was a member of a bargaining unit represented by NUHW, the Charging Party. On April 16, 2018, Grievant was notified that her employment was being terminated for working with an expired nursing license in violation of NATL.HR.010, whose purpose is to ensure that employees maintain all job-related licenses, certifications and registrations.¹ NATL.HR.010 contains the following Policy Statement:

When licenses, certificates, and/or registrations (LCR)s are required by law, accreditation standards, or Kaiser Permanente (KP) policy, it is the **employee's responsibility to ensure that the LCRs are valid and current.** KP does not permit employees to work without required LCRs. (Emphasis added.)

Under Provision 5.1 Employee Responsibilities, it provides in relevant part:

5.1.1 Each employee is responsible for:

5.1.1.1 obtaining and maintaining LCRs in good-standing;

...

5.1.2. KP **may provide courtesy notifications** to employee to remind them of these responsibilities. However, **employees should not rely solely on this notification** before taking appropriate steps to ensure their LCRs remain valid and do not expire. (Emphasis added.)

Under Provision 5.3 Expiration of LCRs, it provides in relevant part:

5.3.1 In some regions, employees who have LCRs that are expiring may receive a courtesy notification from KP before the expiration date. **It remains an employee's responsibility to maintain current LCR. This notification is to serve as a reminder of his/her responsibility.** (Emphasis added.)

5.3.2 Employees who have LCRs that expire while they are on approved leave (e.g., for medical, military or personal reasons) must have their LCRs renewed before they return to work.

¹ Attached as Exhibit 1 is a true and correct copy of the Joint Stipulation entered into the records on April 1, 2019 by Hon. Jeffrey P. Gardner. The Policy is included as Joint Exhibit 1, Exhibit E.

5.3.3 Should an employee who is not already on an approved leave permit his/her LCR to expire, even if application for renewal has been made, or if the LCR is suspended, the employee is placed on an unpaid leave or he/she will not be scheduled to work. If appropriate current documentation of the LCR is not obtained and presented within the region's/state's specified timeframe¹, **the employee is terminated.** (Emphasis added.)

5.3.4 Any manager who knowingly permits an unlicensed person to work for him/her for any reason (including failure to obtain the initial LCR) after the date of expiration, suspension, or revocation of a LCR **will be subject to corrective/disciplinary action, up to and including termination.** (Emphasis added.)

On April 17, 2018, the Union filed a grievance on her behalf with the following statement of complaint for grievance: "Termination without Just Cause."² The Grievance included the RFI that is the subject of this Complaint. Between April 17, 2018 and October 18, 2018, the Employer and the Union engaged in email correspondence related to this RFI. This correspondence is attached as exhibits to and summarized within the Joint Stipulation of the Counsel for General Counsel and Counsel for the Employer, submitted at the Hearing on April 1, 2019 as Joint Exhibit 1. No other communications between the Union and the Employer occurred prior to the filing to the Charge in this Action.

On April 1-3, 2019, four witnesses provided testimony in support of the parties' respective positions.³ Counsel for General Counsel asserts that the Complaint is based on the Employer's refusal to provide information responsive to these four requests.

Request #1: all corrective action cases related to NUHW members who have worked on an expired license.

Request #2: all corrective action cases involving other nursing union members who have worked on an expired license, including corrective action cases involving members of United Nurses Associations of California ("UNAC").

Request #3: any corrective actions directly related to the Grievant's case regarding management discipline.

Request #4: all corrective action notes relating to the grievant.

At all times relevant to this RFI, the Employer did not maintain electronic files that would allow it to track termination decisions based on the reason for the termination. Likewise, the Employer was not able to search any database that would allow it to easily determine the reason an employee was separated from employment. In order for the

² See Exhibit 1, Exhibit F.

³ Attached as Exhibit 2 is a true and correct copy of excerpts from the Hearing Transcript referenced herein.

Employer to determine the basis for termination for individual employees, it would have to review the paper personnel file that is maintained in the department.

III. Argument

The NLRA requires employers to bargain collectively with the employees' lawfully designated bargaining agent. NLRA § 8(a)(5), 29 U.S.C. § 158(a)(5). The duty to bargain includes the obligation to provide information that a union needs in order to perform its duties in grievance processing and collective bargaining negotiations. See *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-37 (1967). This includes information relevant to the processing of existing grievances and the investigation of potential grievances. See *id.* at 437-38. But an employer's statutory obligation is limited to relevant information that the union needs for the proper performance of its duties as collective-bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-36 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). This includes the decision to file or process grievances. *Beth Abraham Health Services*, 332 NLRB 1234 (2000).

Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant, and the Respondent must provide the information. However where, as here, the information requested by the union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate the relevance. *Richmond Health Care*, 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc.*, 318 NLRB 318 (1995), *enfd.* 108 F. 3d 1182 (9th Cir. 1997); *Pfizer, Inc.*, 268 NLRB 916 (1984), *enfd.* 736 F.2d 887 (7th Cir. 1985). A union has satisfied its burden when it demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant. *Knappton Maritime Corp.*, 292 NLRB 236, 238-239 (1988).

A. The Employer Has Fully Complied with Request # 1

Request # 1 seeks all corrective action cases related to NUHW members who have worked on an expired license. The Union contends that the Employer has not fulfilled its duties to bargain with respect to Request Number 1 because the employer never specifically stated that it did not have any documents responsive to this Request. The facts suggest otherwise.

There is no dispute that the Employer provided a timely written response to this Request including by stating that "Kaiser Permanente does not maintain its records in such a fashion as to be able to respond to this request." Mr. Land-Ariizumi testified that he "understood it to be was that there were probably a lot of corrective actions that they could not just pull one and say this was due to an expired license."⁴ He further testified that he never asked the Employer how they maintain their records or what it would take to procure the documents that were being requested.⁵ Instead, he relied upon Mr.

⁴ Exhibit 2, Page 96:11-21.

⁵ *Id.* at Page 95:25 – 96:6.

Snyder to follow-up regarding how this response impacted the Union's ability to get the documents.⁶

Mr. Snyder also testified that he understood Request #1 to mean "that Mr. Czaja was making a claim that it was not possible to get what I was requesting."⁷ Despite testifying that his normal practice would be to "ask for further clarification" when he receives a similar justification that he doesn't agree with, Mr. Snyder never followed up to ask for further information regarding what it would take to fulfill this request—even after the Employer clarified its position by stating "these items cannot be physically produced as the employer does not maintain its records in such a fashion as to be able to respond to this request."⁸ Based on the Union's own testimony, it understood the Employer's position and made no effort to inquire or respond further. As such, it was reasonable for the Employer to conclude that it had fulfilled this request. And any failure to seek alternative solutions to comply with this request was borne equally by the Union and the Employer.

B. Request # 2 Was Unduly Burdensome and Therefore Unreasonable

As analyzed in more detail below in Section III.C, the Employer concedes that the request for information related to non-bargaining unit members was relevant because it sought information related to UNAC members that were subject to the same prohibitions and requirements under NATL.HR.010 as NUHW members. However, a union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested. The duty to supply information under § 8(a)(5) turns upon "the circumstances of the particular case," and the Board must balance the burden placed on the employer when considering the request made by the union, even if it is relevant. See, e.g. *NLRB v. Wachter Constr.*, 23 F.3d 1378 (8th Cir. 1994).

The court in that case determined that the employer did not violate the NLRA when it refused to comply with union demands for voluminous records of nonunion employment for the express purpose of determining compliance with the collective bargaining agreement. The facts here demand the same result. Here, the Union, without geographic or temporal limitation requested all corrective action cases involving other nursing union members who have worked on an expired license, including corrective action cases involving members of UNAC. The Employer asserted that the request was unduly burdensome, and that Kaiser Permanente does not maintain its records in such a fashion as to be able to respond to this request."

At hearing, Mr. Busalacchi testified to the following:

- The Employer is not required to and does not maintain disciplinary records in a manner that categorizes the reason for the discipline.⁹

⁶ Id. At 97:3-6.

⁷ Id. At 130: 12-17

⁸ Id. At 130:12-131:2

⁹ Id. At 162:6-25

- In order to produce these records, “they would have to review an enormous amount of files and go through a lot of files to try to figure out what a [specific] discipline was based on and if it matched that request.”¹⁰
- That could include the records of approximately 26,000 employees as there is no way to know without manually searching the files how many of those employees have been disciplined.¹¹

Notably, Mr. Snyder was aware of the Employer’s objections and simply stated, felt that he “didn’t think [he] needed to, that it wasn’t necessary” to respond.¹² Like the Court in *NLRB v. Wachter Constr.*, the Board should determine that review of approximately 26,000 employee files, each containing numerous documents is unduly burdensome. Even if the Employer was not required to review each file, the burden of producing 26,000 files would be a hindrance to the collective bargaining process, further justifying the Employer’s objections and refusal to comply.

C. Request # 3 is Irrelevant and Should be Denied

When a union requests information about non-unit members, the following three well-established rules apply. First, “the burden is on the union to demonstrate the relevance of [such] information.” *United States Testing Co. v. NLRB*, 160 F.3d 14, 19 (D.C. Cir. 1998); *ConAgra, Inc. v. NLRB*, 117 F.3d 1435, 1439 (D.C. Cir. 1997) (“[A] union must demonstrate that any requested [non-unit] information is relevant ... in order to require the employer to turn it over.”). “Demonstrate,” in its common legal usage, means “[t]o show ... by operation, reasoning, or evidence.” *Animal Legal Def. Fund, Inc. v. Perdue*, 872 F.3d 602, 616-17 (D.C. Cir. 2017) (citing Black’s Law Dictionary 432 (6th ed. 1990)). Second, the union must demonstrate a “reasonable belief, supported by objective evidence, that the requested information is relevant.” *5 Public Serv. Co.*, 843 F.3d at 1005 (quoting *Disneyland Park*, 350 NLRB at 1257-58); *NLRB v. PDK Invs., L.L.C.*, 433 F. App’x 297, 301 (5th Cir. 2011); *Advanced Constr. Servs. v. NLRB*, 247 F.3d 807, 812 (8th Cir. 2001). Third, the union’s presentation of “objective evidence” supporting relevance must occur before or “at the time of the request.” *N.Y. & Presbyterian Hosp.*, 649 F.3d at 730-31 (citing *Gen. Elec.*, 916 F.2d at 1169); *NLRB v. A.S. Abell Co.*, 624 F.2d 506, 513 n.5 (4th Cir. 1980) (“[Courts] deal with the fact situation presented to the [employer] at the time it acted.”). None of these factors are present here.

1. The Union Has Not Met its Burden to Show that Manager Discipline is Relevant

There is no dispute that the information requested involves employees outside of the bargaining unit. As such, to meet its burden to establish relevance, a union must

¹⁰ Id. At 163: 1-11

¹¹ Id. At 163: 12-17

¹² Id. At 137:9-138:15.

present more than “bare assertion[s],” *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979), “conclusory statement[s],” *Coca Cola Bottling Co.*, 311 NLRB 424, 426 (1993), or “mere suspicion,” *Postal Service*, 310 NLRB 701, 707 (1993), that the information might be relevant to some unspecified CBA violation. See *id.* As this Board held in *Postal Service*, information about disciplinary actions (or the lack thereof) taken against supervisors for particular conduct may be relevant to a grievance about discipline against unit employees for the same conduct, **where it is shown that both groups are subject to the same prohibitions or requirements.** *Postal Serv.*, 310 NLRB 701, 702 (1993). (Emphasis added). No such similarities exist in this case.

The undisputed facts reflect that Policy NATL.HR.010 in its language and application establish different prohibitions and requirements for employees and managers, including:

- Employees have the sole responsibility to *ensure* that the LCRs are valid and current. KP *may* provide courtesy notification to employees. (Notably, Mr. Czaja testified that this notification does not even necessarily come from a manager.)
- The provisions for employee discipline in 5.3.1 through 5.3.3 only refer to employees. 5.3.3 requires that Employees who violate this policy will be terminated.
- A manager may only be disciplined under this policy if s/he knowingly allows an employee to work in violation of the policy—in other words, for failing to enforce the policy with respect to employees. And even then, the application and level of discipline is discretionary.
- The provisions for manager discipline in 5.3.4 and 5.3.5 have never been applied to employees.¹³
- Even if a manager were disciplined for failure to enforce the policy with respect to employees, “it wouldn’t impact or affect the employee’s discipline” because “the policy is clear that the responsibility is on the employee to ensure that their LCR is up to date.”¹⁴
- Mr. Czaja testified that “I can’t think of a situation, and I’ve not seen a situation, where the manager’s actions or failure to act mitigates the employee’s responsibility under this policy.”¹⁵

The Union’s bare claim of entitlement to manager discipline rests is based on the allegation that it is necessary to determine whether manager’s receive equal treatment under the Collective bargaining agreement. But, as the facts show, it is impossible to determine equal treatment and likewise impossible to establish relevance because the managers are not subject to the same requirements or prohibitions under the policy and therefore could not be disciplined for the same conduct.

¹³ Id. At 185:15-35

¹⁴ Id. At 185: 1-11.

¹⁵ Id. At 185: 11-14.

Furthermore, the information provide at the hearing is based solely on the Union's representative's subjective belief without any evidentiary support. Mr. Land—Ariizumi admits that his concern for equal treatment was based on nothing more than the fact that he had never heard of a case like this before and therefore had concerns.¹⁶ Indeed, his own experience with the LCR policy led him to admit that it was not the manager's responsibility to make sure that his license did not expire.¹⁷ As such, the Board should find that the Union's conclusory statements are insufficient to establish relevance.

2. Any Evidentiary Support Was Alleged at the Time of Hearing and Should be Disregarded

As stated above, the union's presentation of "objective evidence" supporting relevance must occur before or "at the time of the request. Here, the Union alleges for the first time at the hearing that the concern for equal treatment also applied to the managers. Nowhere in the correspondence between the Union and the Employer was this alleged or specified. Therefore, the Union should not be allowed, after-the-fact to rely on arguments to support a position that it did not take and that the Employer could not have evaluated when determining whether to provide the information requested.

And because none of the 3 elements used to determine relevance of request for information about non-unit members are present here, the Board should find that the Union has failed to meet its burden, and the Employer was justified in withholding the information.

D. Request # 3 Contains Confidential Information that Could Not be Safeguarded By Any Reasonable Restriction on the Use of Information

An Employer may limit information that a union would otherwise find helpful or useful when other legitimate interests of the employer predominate. *Detroit Edison Corp. v NLRB*, 440 U.S. 301 (1979). Here, based on the Employer's policies, managers possess a legitimate interest in the confidentiality of their work performance and related discipline. And because there was only one manager that could have been disciplined in this case, it would have been impossible to safeguard her identity through use of a confidentiality agreement, redaction of personal identifying information or other traditional means. Since no reasonable restriction on use of information would have resolved the Employer's concerns regarding confidentiality, it was justified in relying on these objections (which the Union never addressed See *Infra* 3.B) as an independent basis to deny the Union's request.

¹⁶ Id. At 61:5-9

¹⁷ Id. At 90:5-7

E. The Employer Has Fully Complied with Request Number 4

The Union's claims regarding Request # 4 lack merit because the Employer has produced the requested information. By its own admission, after receiving Mr. Czaja's email on October 17, 2018, the Union considered Request 4 satisfied.¹⁸ Although the Union argues that the delay itself amounts to an unfair labor practice, the facts favor finding it reasonable under the circumstances.

- Request #4 seeks all corrective action notes relating to the grievant.
- Mr. Land Ariizumi testified that the term "corrective action notes" is not a term of art generally understood in the workplace.
- Mr. Czaja testified that he did not understand the request for corrective action notes to seek the consultant's personal notes. Instead Czaja testified that he believed this request was satisfied when he supplied the Corrective Action Level 5 document immediate after receipt of the RFI
- Mr. Snyder testified that he received the Corrective Action Level 5 document but did not understand that it was intended to be responsive to this request

Based on credible testimony from both parties, it is reasonable to conclude that the request for "corrective action notes" was vague and ambiguous and the cause of the delay, which neither party immediately realized. As such, the Employer acted reasonably under the circumstances and should not be found to have engaged in any unfair labor practices related to this request.

IV. Conclusion

The evidence and undisputed facts establish that the Employer did not have a duty to furnish or was justified in failing to furnish the information requested in Requests 1-4 and therefore did not violate the NLRA. Instead, Employer respectfully requests that the Board find that it engaged in good-faith bargaining when it provided timely responses including good faith objections to each of the information requests and continued to meet and confer with the Union in attempts to clarify its responses to the point of impasse. Based on the information available to it at the time of the Request, it was reasonable for the Employer to believe that: it fully complied with Requests #1 and #4; that Request #2 was unduly burdensome and therefore justified the Employer's non-disclosure; that Request # 3 was irrelevant and contained confidential information that justified the Employer's non-disclosure; and that any delay in responding to Request #4 was reasonable based on a clear ambiguity in the understanding of both parties.

Even if the Board disagrees with the Employer's position, it should still find that the Employer possessed a reasonable belief that it was entitled to good faith objections presented timely and reliance on such should not constitute an unfair labor practice.

¹⁸ Id. At 74:4-9.